IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

THURSDAY, THE 7TH JUNE 2007 / 17TH JYAISHTA 1929

Mat.Appeal.No. 75 of 2007()

OPHMA.83/2004 of FAMILY COURT, KOTTAYAM
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PETITIONER: APPELLANT/RESPONDENT

SANTHOSH KUMAR, AGED 33 YEARS,
S/O.VISWANATHA PANICKER, KULATHILETTU VEEDU,
CHENGAROOR KARA, KALLOOPPARA VILLAGE,
MALLAPPALLY.

BY ADV. SRI.R.SANTHOSH BABU

RESPONDENTS: PETITIONER

SANGEETHA NAIR, AGED 24 YEARS,
D/O.SOMASEKHARAN NAIR, UPASANA VEEDU,
MUTTAMBALAM VILLAGE, KOTTAYAM TALUK,
KOTTAYAM DIST.

BY ADV. SRI.C.B.SREEKUMAR [CAVEATOR]

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 07/06/2007, ALONG WITH MA NO. 354 OF 2006 RPFC NO. 231 OF 2006 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Kurian Joseph & T.R. Ramachandran Nair, JJ.

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R.P.(F.C) No.231/2006 & Mat.A.NOs.354/2006, & 75/2007

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Dated this the 7th day of June, 2007

JUDGMENT

T.R.Ramachandran Nair, J.

These three appeals are filed challenging the orders passed by the Family Court, Ettumanoor in three different cases, viz. M.C. No.44/2005, O.P.No.174/2004 and O.P.(HMA) No.83/2004. The appellant in R.P.(FC) No.231/2006 and Mat. Appeal No.75/2007 is the same and he is appellant No.1 in Mat. Appeal No.354/2006. M.C. No.44/2005 the appellant was ordered to pay maintenance at the rate of Rs.1,000/- per month from the date of the petition. In O.P.No.174/2004 the respondent is given a decree to realise a sum of Rupees One Lakh with 6% interest from the date of the suit till realisation and also given a decree directing respondents 1 to 3 therein to return 60 ¾ sovereigns of gold ornaments or its approximate value Rupees Four Lakhs with 6% interest from the date of the order. O.P.(HMA) No.83/2004 was tried along with O.P.No.174/2004 and a common order has been passed in these cases.

2. The main grounds raised by the appellant in these cases are that two other connected cases, viz. O.P.Nos.628/2005 and 629/2005 filed by the

appellant Santhoshkumar along with these cases were pending, which had a direct bearing on the facts of these cases. The appellants were not given any sufficient opportunity to adduce evidence and were set ex-parte also in two cases and an application filed for joint trial of all these cases was not considered.

3. Heard the counsels for the parties. Since the appellants could not adduce evidence before the Family Court and since the two cases filed by the appellant Santhoshkumar are also pending before the same court, it will be in the interest of justice to allow the appellants to have one more opportunity to adduce evidence and contest the matter on merits, on terms. Therefore, the orders under appeal are set aside and accordingly the following directions are issued:

4. The ex-parte decrees are set aside on payment of Rs.7,500/- to the respondent and the Original Petitions are restored to file. All the cases shall be tried jointly along with O.P.Nos.628/2005 and 629/2005 and disposed of on merits. The amount of Rs.7,500/- will be paid to the respondent through counsel within a period of one month from today and a memo to that effect will be produced before the Family Court, Ettumanoor. On such production, the Family Court will take up the matters and dispose

of the same within four months thereafter and if the above condition is not complied with, the appeals and the revision will stand dismissed. The appellant/petitioner will co-operate with the court for an expeditious disposal of the matter. The appellant will also deposit an amount of Rs.5,000/- towards interim maintenance since it is submitted that Rs.10,000/- had already been deposited. The amount of Rs.15,000/- will be treated as interim maintenance and it will be open to the Family Court to pass appropriate orders with regard to the claim for maintenance.

The appeals and revision petition are disposed of in the above terms.

(Kurian Joseph, Judge.)

(T.R. Ramachandran Nair, Judge.)

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